UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/1994/103
3 February 1994

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Fiftieth session
Items 10 and 12 of the provisional agenda

QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES

Letter dated 28 January 1994 from the Permanent Representative of the Transitional Government of Ethiopia to the United Nations Office at Geneva addressed to the Assistant Secretary-General for Human Rights

I have the honour to request you to have your office circulate the enclosed statement by the Special Prosecutor's Office of the Transitional Government of Ethiopia as the official document of the fiftieth session of the United Nations Commission on Human Rights.

(Signed) Yousuf Imbrahim Omar
Ambassador

THE QUESTION OF THE IMPUNITY OF PERPETRATORS
OF HUMAN RIGHTS VIOLATIONS

1. Political Background

At the end of May 1991 the EPRDF (Ethiopian Peoples' Revolutionary Democratic Front), who had allied with other multi-ethnic political organizations, took control of Addis Ababa, the Ethiopian capital, and ended Mengistu's 17-year rule.

The Transitional Period Charter of Ethiopia, which will serve as the supreme law of the land during the period of transition, was adopted on 5 July 1991.

The principles enunciated in Part One of the Charter are of particular interest to the democratization process during the transitional period.

In its preamble, the Charter asserts that "freedom, equal rights and self-determination of all the peoples shall be the governing principles of political, economic and social life" in Ethiopia and the adoption of a "proclamation of a democratic order is a categorical imperative," in order to realize such aspirations and to ensure the prevalence of peace within the country.

The framework adopted by the Charter in order to realize these objectives is two-pronged: the protection of individual rights, based on the Universal Declaration of Human Rights of the United Nations, as stated in Article One, and the protection of the right of nations, nationalities and peoples to self-determination, as stated in Article Two.

The Transitional Government will be holding elections on 5 June 1994 to elect members of the constituent assembly. This body will discuss and finalize the constitution. Once the constitution is finalized, in late 1994 or early 1995, elections will follow shortly thereafter.

Ethiopia has no democratic heritage. Democratic institutions for the first time are now being constructed. This is a complex process and it is clear it will take years to fully develop a democratic culture in Ethiopia. None the less, the Transitional Government has made progress toward this goal.

2. The human rights record of the ousted regime

The existence of a pattern of systematic human rights violations and of grave breaches of humanitarian law under the former Ethiopian regime is well known to several human rights bodies of the United Nations system.

It is sufficient to cite the annual reports of several thematic organs of the Commission on Human Rights, such as the reports of the Working Group on Enforced or Involuntary Disappearances, the reports of the Special Rapporteur on extrajudicial, summary or arbitrary executions and the reports of the Special Rapporteur on the question of torture.

This situation was a matter of concern for many countries in the world during the long years of the Mengistu regime as demonstrated by parliamentary hearings and diplomatic complaints.

The international human rights community is also aware of this record, as stated in numerous reports elaborated by prestigious human rights and humanitarian non-governmental organizations.

According to an Africa Watch report 1/ members of the Mengistu Government bear responsibility for the deaths of at least half a million Ethiopian civilians. Under Mengistu's regime, the Ethiopian army and air force killed tens of thousands of civilians. The notorious urban "Red Terror" of 1977/78 where thousands died was matched by indiscriminate violence against rural populations, especially in Eritrea and Tigray. Counter-insurgency strategies involved forcibly relocating hundreds of thousands of rural people and cutting food supplies to insurgent areas. These military policies were instrumental in creating famine and the former Government used relief supplies as weapons to further its war aims.

3. The creation of the Special Prosecutor's Office, its purposes and organization

The Special Public Prosecutor's Office (S.P.O.) was established on 8 August 1992, as an Office accountable to the Prime Minister of the Transitional Government. The Office, in accordance with the law, has the power to conduct investigations and institute proceedings against those it suspects of committing crimes and/or abusing their positions of authority in the former regime.

Laws concerning criminal investigations and criminal proceedings that apply to ordinary prosecutors also apply to the activities undertaken by the S.P.O.

At present the S.P.O. is investigating the global phenomenon of human rights violations and abuse of authority that transpired during the Mengistu regime. Specifically, the S.P.O. presently has 1,200 detainees under its jurisdiction, all of whom are being held in accordance with the Ethiopian Criminal Procedure Code and are suspected of particularly serious offences. Some 1,000 out of the 2,000 former officials who were detained after the fall of the Mengistu regime have been released on bail since the S.P.O. was established.

In terms of the current status of our work, the investigations are moving forward. The computerization process has begun. For example, the S.P.O. has hired well over 400 people to search for and collect the numerous government documents relating to human rights violations that can still be found throughout the country. The S.P.O. will probably add an additional 200 people to finalize the search and to facilitate the computer coding process. We

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1/ EVIL DAYS, Thirty Years of War and Famine in Ethiopia. An Africa Watch Report. Human Rights Watch. New York/Washington/Los Angeles/London, 1991.

expect usable reports by mid-March. Thereafter, we will make the final policy decisions regarding who we will be charging and for what. Barring any major unforeseen problems, trials shall commence in the first quarter of the year.

4. The issue of impunity

The fight against impunity is a legitimate concern of the international community as stated in the Vienna Declaration adopted by the World Conference on Human Rights:

> "91. The World Conference on Human Rights views with concern the issue of impunity of perpetrators of human rights violations (...)"
>
> "60. States should abrogate legislation leading to impunity for those responsible for grave violations of human rights such as torture and prosecute such violations, thereby providing a firm basis for the rule of law."
>
> "62. (...). The World Conference on Human Rights reaffirms that it is the duty of all States, under any circumstances, to make investigations whenever there is reason to believe that an enforced disappearance has taken place on a territory under their jurisdiction and, if allegations are confirmed, to prosecute its perpetrators."

According to these principles, it is the duty of the Transitional Government of Ethiopia to bring to justice those persons with respect to whom there are serious reasons for considering that they are responsible for serious violations both of international law and domestic law that can be assimilated in some cases to crimes against humanity.

5. The problem of the victims

As stated in the preliminary report on the question of the impunity of perpetrators of human rights violation prepared by Mr. Guissé and Mr. Joinet (E/CN.4/Sub.2/1993/6), although action to combat impunity has its roots in the need for justice, it cannot be reduced to the sole objective of punishing the guilty. It must conform to three requirements: the punishment of those responsible according to the judicial guarantees, satisfying the victim's right to know and to obtain redress, and enabling the authorities to fulfil their mandate as the public agency which guarantees law and order.

The crimes committed under the former regime were not only crimes against the victims and the Ethiopian people; in many cases they were crimes against humanity - crimes that the international community has a particular interest to prevent, to investigate and to punish.

The Transitional Government of Ethiopia is aware of its obligations concerning the duty to prosecute the systematic violations of human rights and the grave breaches of humanitarian law. It has also decided to respect and guarantee the right of the families to know the fate of their relatives and to receive restitution. The TGE has encouraged the families to give testimonies

for the establishment of a historic record on the past human rights violations, which also constitutes a prior measure for the prosecution of those considered responsible for heinous crimes.

6. The rights of the defendants

These trials shall be an important step in the construction of the rule of law in Ethiopia. The TGE vows to enforce the principle enshrined in the Universal Declaration of Human Rights, according to which everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of all rights and obligations and of any criminal charge against such person.

Therefore, defendants will be brought before the Courts in full respect of the judicial guarantees established by the main international instruments of human rights and humanitarian law. The trials, which shall begin in the next few months, will be opened to the press, the public and the broadest international monitoring.

The TGE is currently working on a bill to improve the provisions of law concerning fair trial and due process of law. The complexity, coupled with the potential historic import of these trials, cannot be underestimated. Specifically, the TGE intends to comply fully with international standards in these proceedings to demonstrate its commitment to and fortify the establishment of the rule of law in Ethiopia.

7. The Judiciary in the ongoing process towards democratization

Article Nine (f) of the Charter provides that "the Courts shall, in their work, be free from any governmental interference with respect to (individual rights)". To implement the principle of an independent judiciary, Proclamation No. 23/1992 entitled "A Proclamation to Provide for the Independence of Judicial Administration" was enacted on 8 August 1992. Article 4 of this proclamation provides for the complete independence of judges in the discharge of their judicial functions and states that judges are to abide by international treaties, customs and laws that are not inconsistent with the Charter.

8. Balancing the rights of the victims, the rights of the defendants, the values of justice and reconciliation

The Office of the Special Prosecutor has been mandated to create a historical record of the abuses of the Mengistu regime and to bring those criminally responsible for human rights violations and/or corruption to justice.

The ambitious nature of this task has been clear from the beginning, given the scope and legal complexities involved. We must balance many factors: our international and domestic legal obligation to investigate and bring to justice gross human rights violators, our international and domestic legal obligations to respect due process, and our role in the construction of a society based upon the rule of law.

There is no easy or apparent magic balance of these factors. We must consider our legal obligations, our moral obligations, the future of our country and the resources and potential not only of this office but also the court, defence and prison systems.

The assistance of the international community is necessary to enable the S.P.O. to fully consider and balance all of these factors.

9. Role of the international community

Cognizant of its obligations and painfully aware of its resource limitations, shortly after it began working the S.P.O. formally requested assistance from the international community.

While it took some time for the international community to respond to the Transitional Government's appeal for assistance, by December of 1993 the following Governments had committed financial and/or technical support: Sweden, Denmark, the United States of America, Norway, the Netherlands, Canada and France. At present, there are international experts from Argentina, Denmark, France, the United Kingdom, Norway and the United States working with the S.P.O. Further, NGOs like the Carter Center, the Argentine Anthropological Forensic Team, and the American Bar Association are providing assistance. And finally, S.P.O. will soon host the Attorney General of France and a mission of United Nations experts.

The recent influx of resources has played an important role in moving the S.P.O. towards compliance with international standards. For example, the Transitional Government, with the assistance of the Danish Government, has recently established an Office of Public Defence to provide an advocate for those S.P.O. defendants who are not at present represented by counsel. It is clear that continued international support will be essential, in order that the process fully contributes to the democratization of Ethiopia.